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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,242	02/01/2002	Andrew Richard Wainwright	294-107 PCT/US	9497

7590 05/18/2004

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,242

Applicant(s)

WAINWRIGHT ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 19-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of group I in the response of April 26, 2004 is acknowledged.
2. Claims 19-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim.

Specification

3. The disclosure is objected to because of the following informalities: it lacks section headings such as "Detailed Description".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claims 1-18 recite "high amylopectin" and "normal amylopectin". It is not clear what level of amylopectin would be considered "high" and "normal", 85%? 95%?

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7. Claims 11-14 recite "waxy starch". It is not clear whether this is the same component as the "high amylopectin starch" since the term "waxy" was commonly understood to mean "high amylopectin content". It is not clear what level of amylopectin would be considered "waxy", 85%? 95%?

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-9 and 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martines-Serna Villagran et al [Pat. No. 6,544,580] in view of de Vries [New Possibilities With Amylopectin Potato Starch].

Martines-Serna Villagran et al teaches a snack product comprising potato flakes (column 10, lines 15-28), the potato flakes comprising 78% of the snack product (column 21, line 25), cereal flours and normal potato starches (column 10, lines 40-63), additives such as emulsifiers (column 11, line 65), the snack products being fried, baked, or extruded (column 10, lines 15-28), Saturna variety of potatoes (column 4, line 28), less than 5% reducing sugars (column 11, line 50), and oil (column 17, line 30). De Vries does not recite high amylopectin potato starch. De Vries teaches a snack product comprising high amylopectin potato starch (page 9). It would have been obvious to one

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of ordinary skill in the art to incorporate the high amylopectin potato starch of de Vries into the invention of Martines-Serna Villagran et al since both are directed to snack products, since Martines-Serna Villagran et al already taught a snack product made from fried potato flakes (column 10, lines 15-28), and since the high amylopectin potato starch of de Vries provided better control of expansion after frying and provided better results than normal potato starch (page 9).

10. Claims 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martines-Serna Villagran et al, in view of de Vries, as applied above, and further in view of Jeffcoat et al [Pat. No. 6,541,060].

Martines-Serna Villagran et al and de Vries teach the above mentioned components. Martines-Serna Villagran et al and de Vries do not recite less than 10% pregelatinized waxy potato starch. Jeffcoat et al teach a food product comprising less than 10% pregelatinized waxy potato starch (column 13, Example 18). It would have been obvious to one of ordinary skill in the art to incorporate the less than 10% pregelatinized waxy potato starch of Jeffcoat et al into the invention of Martines-Serna Villagran et al, in view of de Vries, since all are directed to food products, since Martines-Serna Villagran et al already included many different types of starches (column 10, lines 39-63), and since pregelatinized waxy potato starch was commonly used in food products, as shown by Jeffcoat et al (column 13, Example 18).

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mikla et al [Pat. No. 6,699,519], Mikla et al [Pat. No. 6,720,019],


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Villagran et al [Pat. No. 6,703,065], Ellis et al [Pat. No. 4,806,377], Adesso et al [Pat. No. 5,429,834], EP 0799837A2, and EP 0703314A1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Drew E Becker
Primary Examiner
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5-14-04